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1CHAPTER 4181
1FOREIGN CORPORATIONS1

Part I.Foreign Corporations

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1PART I.11FOREIGN CORPORATIONS GENERALLY1

1418-111Declaration.1 Every
corporation
organized under the laws of any other jurisdiction which
undertakes to do or transact business in this State shall file
in the office of the director of commerce and consumer
affairs:

(1) A declaration sworn to on oath by
two authorized officers of the corporation stating:

(A) The name of the corporation;
(B) The state wherein it was
incorporated;

(C) The address of its principal office;

(D) The address of its proposed branch office or offices in the State;

(E) The names and addresses of its officers and directors;

(F) The amount of its paid up capital stock;

(G) The total value of the property owned and used by it in its business;

(H) The nature and total value of the property to be acquired by it for use in the State within the following twelve months;

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(I) The nature of the business to be transacted in the State;

(K) The name and business address of the person residing within the State upon whom legal notice and process from the courts of the State, or notices from officials of the State, may be served.

(2) A copy of the articles of incorporation as amended to the date of the declaration, certified to by the proper officer of the state where the corporation was organized need not be filed except upon request by the director of commerce and consumer affairs.

(3) A certificate setting forth that such corporation is in good standing under the laws of the jurisdiction of its incorporation executed by the official of such jurisdiction who has custody of the records pertaining to corporations and dated not earlier than thirty days prior to the filing of the declaration. If such certificate is in a foreign language, a translation thereof under oath of the translator shall be attached thereto.

2418-222Same; by nonprofit corporation.2

Any corporation organized without capital stock under the laws of any other jurisdiction for any lawful purpose except the carrying on of a business, trade, avocation or profession for profit which undertakes to do or transact business in this State

shall file in the office of director of commerce and consumer affairs:

(1) A declaration sworn to on oath by two authorized officers of the corporation stating:

(A) The name of the corporation;

(B) The state wherein it was incorporated;

(C) The address of its principal office;

(D) The address of its proposed branch office or offices in the State;

(E) The names and addresses of its officers and directors, if any;

(F) The nature of the business to be transacted in the State;

(G) The name and business address of the person residing within the State upon whom legal notice and process from the courts of the State, or notices from officials of the State, may be served.

(H) That the corporation is not organized for profit and that it will not issue any stock, and no part of its assets, income, or earnings shall be distributed to its members, directors, or officers, except for services actually rendered to the corporation.

(2) A copy of the articles of incorporation as amended to the date of the declaration, certified to by the proper officer of the state wherein the corporation was organized need not be filed except upon request by the director of commerce and consumer affairs.

(3) A certificate setting forth that such corporation is in good standing under the laws of the jurisdiction of its incorporation executed by the official of such jurisdiction who has custody of the records pertaining to corporations and dated not earlier than thirty days prior to the filing of the declaration. If such .FO ?

certificate is in a foreign language, a translation thereof under oath of the translator shall be attached thereto.

3418-333Registered agent, change of agent.3 Every foreign corporation authorized to transact business in this State shall have and continuously maintain in

this State an agent for service of process. A foreign corporation authorized to transact business in this State may change its agent to accept service of process in this State by filing with the director of commerce and consumer affairs a statement of such change verified by any authorized officer. Upon the filing of such verified statement, the appointment shall become effective. Any person authorized as agent to accept service of process of a foreign corporation may resign as such agent upon filing a written notice thereof executed in duplicate with the director of commerce and consumer affairs who shall forthwith mail a copy thereof to the corporation at its principal office. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the director of commerce and consumer affairs. If any agent designated by a foreign corporation shall die or remove from the State or resign then the foreign corporation shall, within thirty days after the death, removal or resignation of the agent, substitute, designate and certify to the director of commerce and consumer affairs another agent.

4418-4 Name; declaration not acceptable,
when.4 No declaration of a corporation required to file a declaration under section 418-1 or 418-2 shall be accepted by the director of commerce and consumer affairs if the name of the corporation is substantially identical with any corporation or partnership registered to do business under the laws of the State or with any trade name, service mark, or trademark previously registered under the laws of the State.

The acceptance of a declaration for registration by the director shall not abrogate or limit any common law or other right of any person to any corporation or partnership name, trade name or trademark. The director may make, amend, and repeal such rules as may be necessary to carry out the purposes of this section.

No declaration of a corporation required to file a declaration under section 418-1 shall be accepted by

the director if the paid-in capital as shown on the declaration is less than \$1,000.

5418-555Additional requirements in case of amendment of charter, merger, or consolidation.⁵ Every foreign corporation qualified to do business in this State which

shall amend its charter so as to change its corporate name or shall be a party to a merger or consolidation shall, within thirty days after the time the amendment or merger or consolidation becomes effective, file with the director of commerce and consumer affairs a certificate by the official who

has custody of the records pertaining to corporations in the jurisdiction in which the corporation shall have been incorporated, certifying as to the change of name, merger, or consolidation. If such certificate is in a foreign language, a translation thereof under oath of the translator shall be attached thereto. A copy of the amendment or a copy of the articles of merger or consolidation, duly certified by the proper

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officer of the jurisdiction in which the corporation shall have

been incorporated, shall be filed with the director of commerce

and consumer affairs if the director so requests.

5418-655Activities not constituting doing

business in State.⁵ (a) Without excluding other activities which

may not constitute doing or carrying on business in the State, a

corporation formed or organized under the laws of any territory,

possession, or other state of the United States, or of any foreign state or country shall not be considered to be doing or

carrying on business in the State for the purposes of this chapter by reason of carrying on in the State any one or more of

the following activities:

(1) Maintaining or defending any action

or suit or any administrative or arbitration proceedings or effecting the settlement thereof or the settlement of claims or disputes.

(2) Holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs.

(3) Maintaining bank accounts.

(4) Maintaining offices or agencies for the transfer, exchange, and registration of its securities, or appointing and maintaining agents, trustees, or depositories with relation to its securities.

(5) Effecting sales through independent contractors.

(6) Soliciting or procuring orders whether by mail or through employees or agents or otherwise where the orders require acceptance without the State before becoming binding contracts.

(7) Creating evidences of debt, mortgages, or liens on real or personal property.

(8) Securing or collecting debts or enforcing any rights in property securing the same.

(9) Transacting any business in interstate commerce.

(10) Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature.

(b) A foreign financial institution whose principal office is not within this State and which is federally or state chartered and federally- insured, which by law is subject to periodic examination by its regulatory authority and to the requirement of periodic audit, shall not be considered to be doing business in this State by reason of engaging in the advertising or solicitation of savings accounts or investment or other certificates in this State by mail, radio, television, magazines, newspapers or any other media that are published or circulated within this State; provided that in any advertising or solicitation by mail, or in any media which is directed primarily to persons in this State, there shall be a conspicuous statement made that the institution is not

supervised or regulated by this State. Such financial institution shall not thereby become subject to chapters 401, 402, 403, 406, 407 or 408. This subsection shall not apply to any financial institution doing business in Hawaii, chartered or licensed pursuant to chapters 401, 402, 403, 406, 407 or 408.

7418-777 Powers and liabilities; fees.7

Every foreign corporation other than nonprofit, on complying with section 418-1 and paying to the director of commerce and consumer affairs a fee of \$50 shall, subject to sections

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418-9 and 418-13, have the same powers and privileges and be subject to the same disabilities as are by law conferred on corporations constituted under the laws of the State, and shall,

for the purposes for which it is constituted, have full power to

hold, take, and convey by way of sale, mortgage, or otherwise, real, personal, and mixed estate in the State; provided that the

purposes for which the corporation is constituted are not repugnant to or in conflict with any law of the State.

Nothing

herein shall be construed to give any corporation any of the special powers conferred by law upon railroad or banking corporations constituted under the laws of the State. Special handling fees, credited to the special fund authorized by section 416-97 may be charged to expedite the processing of the

following foreign corporation documents: foreign corporation declaration, \$40; application for certificate of withdrawal, \$10; certificate of good standing, \$10; certification of documents, \$1 a page.

7418-877 Powers and liabilities; foreign nonprofit corporation.7

Every foreign nonprofit corporation on

complying with section 418-2 and paying to the director of commerce and consumer affairs a fee of \$10 shall, subject to section 418-13, have the same powers and privileges and be subject to the same disabilities as are by law conferred on nonprofit corporations constituted under the laws of the State,

and shall, for the purposes for which it is constituted, have

full power to hold, take, and convey by way of sale, mortgage, or otherwise real, personal, and mixed estate in the State; provided that the purposes for which the corporation is constituted are not repugnant to or in conflict with any law of the State. Special handling fees, credited to the special fund authorized by section 416-97 may be charged to expedite the processing of the following foreign nonprofit corporation documents: foreign nonprofit corporation declaration, \$40; application for certificate of withdrawal, \$10; certificate of good standing, \$10; certification of documents, \$1 a page.

8418-988Annual license mandatory, exceptions; fees.8 No foreign corporation except foreign insurance companies and foreign nonprofit corporations shall do or carry on business in the State unless it shall first have obtained from the director of commerce and consumer affairs an annual license to do so. Every corporation shall pay to the director of commerce and consumer affairs an annual license fee of \$100. The license fee shall be assessed on the basis of the fiscal year from July 1 to June 30. The first license fee due upon qualification shall be prorated according to the month of qualification and shall be as follows:

July - December \$100

January - June \$50.

The director may settle and collect an account against any corporation violating this section for the amount of the license fee together with a penalty of fifty per cent for failure to pay the same; provided that no license shall

be necessary for any corporation while solely employed by the government of the United States. The director may, for good cause shown, reduce or waive the penalty.

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8418-1088Penalties.8 Every person acting as agent, or assuming to act as agent, of any foreign corporation which has failed to comply with any of the statutes

regarding foreign corporations, shall forfeit to the State \$100

for every violation, neglect, or failure, to be recovered by action brought in the name of the State by the director of commerce and consumer affairs.

Any corporation violating or neglecting or failing in any particular to conform to or comply with any of

the provisions of this chapter shall be subject to a forfeiture

of an amount to be determined by the director not exceeding \$100

for every such violation, neglect or failure, to be recovered by

action brought in the name of the State by the director. A continuance of a delinquency shall be a separate offense for each thirty days of the continuance. The director may, for good

cause shown, reduce or waive the penalties imposed by this section.

9418-1199Annual exhibit.9 (a) Every corporation qualified under section 418-1 shall file by June 30

of each year, with the director of commerce and consumer affairs

an exhibit of its state of affairs as of December 31 of the preceding year together with a remittance of \$10 to cover the filing fee. The exhibit shall contain information as the director shall prescribe.

(b) Every corporation qualifying under section 418-2 shall file by June president, and secretary or treasurer, setting forth:

(A) That it surrenders its authority to transact business in this State,

(B) That it irrevocably consents that process against it in any action or suit upon any liability

or obligation incurred within this State before the issuance of

the certificate of withdrawal may be served upon the director and that service of process upon the director shall be deemed sufficient service upon it, and

(C) A post office address to which

the director may mail a copy of any process against the corporation that may be so served upon him;

(2) Satisfactory proof showing that, within sixty days last past, it has advertised in a daily newspaper of general circulation in the State, once in each of four successive weeks (four publications), a notice to all creditors of the corporation that it intends to apply, within sixty days from the first publication of the notice, to the director for a certificate of withdrawal and intends to withdraw from and surrender its right to engage in business within this State and notifying all creditors of the corporation or company to present their claims;

(3) Satisfactory proof that not less than fifteen days have elapsed since the last publication of the notice;

(4) Satisfactory proof showing that all creditors of the corporation, resident or located within the State, have been paid; and

(5) A valid certificate or certificates showing that all of the taxes, imposts, license fees, and assessments theretofore levied upon, due or payable by the corporation to the State have been fully paid and discharged.

Upon the filing with and the approval by the director of the aforesaid certificates and proofs and after payment of a fee of \$3 for the certificate, the director shall issue to the corporation a certificate stating that it has withdrawn and surrendered its right to engage in business within this State. No corporation may withdraw from this State without complying with the aforesaid conditions and until such compliance service of legal notices and processes upon the person designated by it under section 418-1 or 418-2 shall be deemed sufficient service upon it, or if the designated person does not continue to reside in the State at the designated business address, service of the notices and processes upon the director shall be deemed sufficient service of the notices and processes upon it.

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11418-151111Cancellation of
registration.11

If any corporation which has complied with section 418-1 or 418-

2 has failed or neglected for a period of two years to file an annual exhibit as required by law, the director of commerce and consumer affairs may cancel the registration of the corporation.

At least sixty days prior to the cancellation, the director shall cause notice thereof to be given to the person named in the declaration required by section 418-1 or 418-2 as the person

residing within the State upon whom notice and process from the

courts of the State or notices from officials of the State may be served, and shall cause notice thereof to the creditors of the corporation to be published once in each of two successive weeks in a daily newspaper of general circulation in the State.

The expenses of the notice, whether given by personal service, by mailing, by publication, or by all thereof, shall be a charge

against and may be collected by action against the corporation concerned. Any corporation, the registration of which is canceled pursuant to this section, shall be deemed no longer qualified under this part to transact business in this State, and shall not be registered hereunder except upon compliance with the provisions hereof as if for the first time.

11418-161111Fraternal benefit societies
exempt from chapter.11 Fraternal benefit societies licensed under

chapter 434 shall not be subject to this chapter.

11418-17-Rules.11 The director of commerce and consumer affairs may make, amend, or repeal rules pursuant to chapter 91, to implement the provisions of this chapter.

11PART II.FOREIGN CORPORATIONS MAKING11
11MORTGAGE LOANS11

11418-211111Foreign corporations; real

estate loans, limited license.¹¹ Any other law to the contrary notwithstanding, foreign corporations authorized under their articles, charters, or certificates of incorporation and the laws of their states of domicile to engage in a banking, insurance, or other business and to invest in notes secured by real estate mortgages, shall be permitted to apply for and receive limited licenses permitting the corporations to engage solely in the making, servicing, and collecting of loans secured by mortgages and as an incident thereto the taking, holding, and disposing of any property acquired in enforcement of the rights of the mortgagee in the event of default by the mortgagor. The permitted mortgages are only those secured by real property or an interest therein; however, incidental personal property may be included in the mortgage. The limited license shall exempt the holder thereof from any additional state registration requirement for the purpose of qualifying the corporation to do business in the State or for holding or disposing of real property.

12418-221212Exemptions.¹² Corporations licensed pursuant to this chapter shall be exempt from qualifying under chapter 403 (known as the Hawaii Bank Act of 1931) and shall not be subject to chapter 401. All income in

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respect of mortgage loans, which are guaranteed or insured by the Federal Housing Administration or the Veterans Administration and which are made during the period of six years from June 3, 1957, earned or received by any corporation authorized to do business under this chapter shall not be considered as income for the purpose of determining any tax, license fee, or charge payable by the corporation to the State. The director of taxation shall adopt regulations for the purpose of administering this section in such manner as to disallow, in the determination of state taxes, all deductions for expenses, or for interest, dividends, or returns paid or credited, or the

like, attributable to or connected with income which, pursuant to this section, is not to be considered as income.

13418-231313Applications; necessary
inclusions; fee.13 The director of commerce and consumer
affairs
shall administer section 418-21 and prescribe the form of
application for the limited license. The application shall
include, among other things, the address of the home office,
together with the name and business address of the person
residing within the State upon whom legal notice and process
from the courts of the State, or notices from officials of the
State, may be served. The limited license shall be granted
those corporations meeting the requirements of this part upon
the payment of a license fee of \$500 for a one year license.
The license shall be renewable by the payment of the same
amount
as the annual license fee.